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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,082	11/20/2003	Clarence W. Shonnard	WS02-001CIP	9421

7590 09/13/2004

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EXAMINER

TORRES, ALICIA M

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,082

Applicant(s)

SHONNARD, CLARENCE W.

Examiner

Alicia M Torres

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 4, 6 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/4/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Specification

1. The disclosure is objected to because of the following informalities: the word “floting” in the title should be changed to –floating—.

Appropriate correction is required.

Claim Objections

2. Claim 1 is objected to because of the following informalities: the word “axel” in line 4 should be changed to –axle—. Appropriate correction is required.

Claim 7 is objected to because of the following informalities: there is lack of antecedent basis for “the hollow wheels” in line 8. Appropriate correction is required.

Claim 7 is objected to because of the following informalities: lines 8 and 9 are confusing and appear unfinished. Appropriate correction is required.

Claim 11 is objected to because of the following informalities: it appears that claim 11 should depend from claim 9. Appropriate correction is required.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plastic grid “12C” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended.

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The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “12B” has been used to designate both the bottom plastic grid and a side plastic grid in figure 1. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-3, 5, and 7-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 6-9, 12, -16 of U.S. Patent No. 6,672,039. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims filed are broader in scope than those of Patent No. 6,672,039.

DETAILED ACTION

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Stewart et al., hereafter Stewart.

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Stewart discloses the following method for harvesting surface growing algae or floating vegetation that does not disturb the water ecology, the method comprising:

providing a harvester (10) with a deck (28) and wheeled means (12, 14) connected to said deck (28);

moving said harvester (10) through said vegetation at a set height above said water bottom;

said set height is adjusted by means of the buoyancy of the hollow wheels (12, 14) of said deck (28) and wheeled means (12, 14) wherein water/air fills the wheels (12, 14) to maintain buoyancy; and

skimming, compacting (with fork 142) and collecting said algae or vegetation on said deck (28) wherein said water bottom ecology is unaffected by the said harvesting.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2, 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Pace in view of Preiss.

Pace discloses a manual mobile apparatus for harvesting aquatic algae or floating vegetation in shallow areas of water that does not disturb the water bottom ecology comprising:

a perforated self-draining deck (38);

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means attached to said deck (38) including a flexible plastic grid (42) enclosed on all sides and by a top cover to collect the cut aquatic vegetation; and

a manual push or pull handle (34) attached to said deck (38) with vertical mobility from front to back over the deck (38) that can reverse direction of motion without turning the apparatus, as per claim 1; and

wherein said handle (34) is vertically moveable in an arc of up to 180 degrees so that said harvester (20) can be pushed or pulled without turning said harvester (20), as per claim 2; and

further comprising:

a non-on-board power source (36) to aid in the movement of said harvester (20), as per claim 5.

However, Pace fails to disclose a deck with wheels on a transverse axel;

said wheels are hollow and are capable of adjusting the buoyancy of said apparatus by adding or subtracting water/air into said hollow wheel.

Preiss discloses a water borne vehicle including a deck (a) with wheels (c) on a transverse axel (d);

said wheels (c) are hollow and are capable of adjusting the buoyancy of said apparatus by adding or subtracting water/air into said hollow wheel.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the wheels of Preiss on the harvester of Pace in order to permit land transportation.

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11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pace in view of Preiss as applied to claim 1 above, and further in view of Riche.

The device is disclosed as applied above. However, Pace and Preiss fail to disclose wherein said means for collecting said vegetation is a flexible plastic grid or net.

Riche discloses a similar harvester wherein said means (unnumbered) for collecting said vegetation is a flexible plastic grid or net.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the grid of Riche on the harvester of Pace and Preiss in order to be corrosion resistant.

12. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart in view of Pace.

The device is disclosed as applied above. However, Stewart fails to disclose wherein moving said deck wheeled means is moved by a handle that can be moved in an arc of up to 180 degrees so as to be able to either push or pull said harvester without turning the harvester, as per claim 8; and

wherein said moving said harvester is done with aid of a non-on-board power source, as per claim 9; and

wherein said non-on-board power source is carried on a boat which has a connection to said harvester to aid in said moving of said harvester, as per claim 10.

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Pace discloses a similar device wherein moving said deck means (38) is moved by a handle (34) that can be moved in an arc of up to 180 degrees so as to be able to either push or pull said harvester (20) without turning the harvester (20), as per claim 8; and

wherein said moving said harvester (20) is done with aid of a non-on-board power source (36), as per claim 9; and

wherein said non-on-board power source is carried on a boat (36) which has a connection to said harvester (20) to aid in said moving of said harvester (20), as per claim 10.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the power means of Pace on the harvester of Stewart in order to move the harvester.

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart in view of Pace as applied to claim 10 above, and further in view of Stewart, III.

The device is disclosed as applied above. However, Stewart and Pace fail to disclose wherein said non-on-board power source is carried on the shore which has a connection to said harvester to aid in said moving of said harvester.

Stewart, III discloses a similar harvester wherein said non-on-board power source (32) is carried on the shore which has a connection to said harvester (38) to aid in said moving of said harvester (38).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the on-shore power source of Stewart, III on the harvester of Stewart in view of Pace in order to provide a power take-off.

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Allowable Subject Matter

14. Claims 4, 6 and 12 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

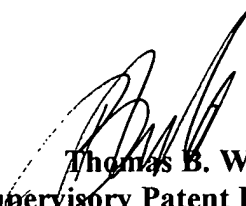
Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berg, Savino, and Collins have been cited as of interest.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.


Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT
September 7, 2004